



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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February 29, 2012

MEMORANDUM FOR JAMES S. WELLER  
REGIONAL COMMISSIONER, PBS  
GREATER SOUTHWEST REGION (7P)

FROM ADAM R. GOOCH *Adam Gooch*  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
GREAT LAKES REGION (JA-5)

SUBJECT Award and Administration of Contract for Construction Services in Support of the American Recovery and Reinvestment Act of 2009<sup>1</sup> at the Internal Revenue Service Southwest Service Center, Austin, Texas  
Memorandum Number A090184-27

As part of our oversight of the General Services Administration's (GSA) American Recovery and Reinvestment Act (Recovery Act) projects, we identified two issues related to the subject project that warrant your attention. First, the Public Buildings Service (PBS) improperly used the multiple award schedule to contract for this project. Specifically, the task order was entirely open market items. Pricing was not based on the prime contractor's authorized schedule price list, and thus overall price reasonableness was not demonstrated. Second, foreign-manufactured construction materials were installed in violation of the Buy American provision of the Recovery Act.

GSA awarded task order number GS-P-07-10-HH-0032 to DMI Corporation (Decker) on March 10, 2010, in the amount of \$2,373,900 for the replacement of chillers and associated mechanical equipment at the Internal Revenue Service Southwest Service Center in Austin, Texas, including tie-in to the building automation system. The task order was placed against Decker's multiple award schedule contract number GS-21F-0054U for facilities maintenance and management.<sup>2</sup> The majority of the work was completed as of January 2011.

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<sup>1</sup> The American Recovery and Reinvestment Act of 2009 (Recovery Act) provides the General Services Administration (GSA) with \$5.55 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA Public Buildings Service (PBS) is using the funds to convert federal buildings into High-Performance Green Buildings as well as to construct federal buildings, courthouses, and land ports of entry. The Recovery Act mandates that \$5 billion of the funds must be obligated by September 30, 2010 and that the remaining funds be obligated by September 30, 2011. The GSA Office of Inspector General is conducting oversight of the projects funded by the Recovery Act. One objective of this oversight is to determine if PBS is awarding and administering contracts for limited scope and small construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates.

<sup>2</sup> Decker's contract was awarded with two special item numbers (SINs): SIN 811 005 for refrigeration, heating, ventilation, air conditioner, boiler, and chiller maintenance services and SIN 800 1000 for other direct costs.

The PBS Commissioner, Greater Southwest Region, submitted a formal response to our audit memorandum. The response states that PBS has reviewed and is in agreement with our audit findings. A copy of the response is included in this memorandum.

### **Multiple award schedule used improperly**

During our review, we examined the price reasonableness determination prepared by the contracting officer, which stated that proposed task order rates and costs had been verified to Decker's schedule contract and the contractor had proposed a rate consistent with contract rates. We determined that this verification was impossible to perform - the order was an open market purchase of construction services. As such, the order had no relationship to the contractor's schedule price list or underlying schedule contract. Therefore, the Government may have paid more than it should have for supplies, equipment, and services related to the replacement of the chillers.

The task order included the following:

<b>Division</b>	<b>Base Price</b>
Electrical	\$160,216
Mechanical	\$774,177
Major Equipment	\$772,591
Ancillary Hardware	\$194,234
Building Automation System	\$198,463
Labor	\$229,379
Five Year Parts and Labor Warranty	\$44,840
<b>Project Total</b>	<b>\$2,373,900</b>

The Government's request for proposal detailed the following requirements: "Price Proposal. The pricing must be broken down in enough detail to verify pricing against the Federal Supply Schedule Price List." The price proposal sheet also required the contractor to "Provide backup material and cost breakdowns for any single cost exceeding \$5,000." Decker did not adhere to these requirements in its proposal or subsequent invoicing.

For example, Decker's task order contained around \$772,000 in "Major Equipment," including chillers, a refrigerant monitor, cooling towers, fans, and pumps. The equipment was not on the company's schedule price list.<sup>3</sup> In addition, as shown above, Decker proposed around \$229,000 in labor costs. These costs were not traceable to rates contained in its schedule price list. In fact, Decker's invoicing and proposal bore no resemblance to its schedule price list. Its proposal consisted wholly of open market

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<sup>3</sup> The only labor rates on Decker's schedule price list are hourly rates for HVAC service calls and boiler service calls. The only prices for materials are for gaskets, gauge glass, fireside repair kits, joint sealant, ceramic fiber insulation, and boiler rope.

items and thus the task order was an open market purchase of construction services, instead of a schedule order.

Federal Acquisition Regulation (FAR) 8.402(f) allows a contracting officer to add items not on the schedule contract (referred to as open market items) to an order, but only if all applicable acquisition regulations<sup>4</sup> pertaining to the purchase have been followed. The regulations also require the contracting officer to determine that the price for the items not on the schedule is fair and reasonable; to clearly label the items on the order as items not on the schedule; and to include on the order all clauses applicable to items not on the schedule. The task order file stated, in three instances, that the proposed rates were verified to the contractor's schedule price list. This was not the case and, therefore, not a basis for price reasonableness. Additionally, the task order does not acknowledge the open market items.

PBS improperly used the multiple award schedule to contract for this project. In ordering open market items through Decker's schedule contract without requiring full and open competition, PBS did not adhere to the requirements of FAR 8.402(f). In addition, FAR 6.101(a) requires contracting officers to promote and provide for full and open competition in soliciting offers and awarding government contracts.

We apprised PBS officials of our open market pricing concerns regarding the schedule task order; however, PBS provided no information that validated the task order pricing.

**PBS did not ensure compliance with section 1605 (Buy American)**

Decker provided approximately \$20,000 in construction material that was not compliant with the Buy American provision of the Recovery Act legislation. By allowing foreign-manufactured construction material to be incorporated into the Recovery Act project, PBS did not ensure that the Recovery Act goal of providing jobs for American companies was fully met.

The foreign-manufactured construction material we found is listed below:

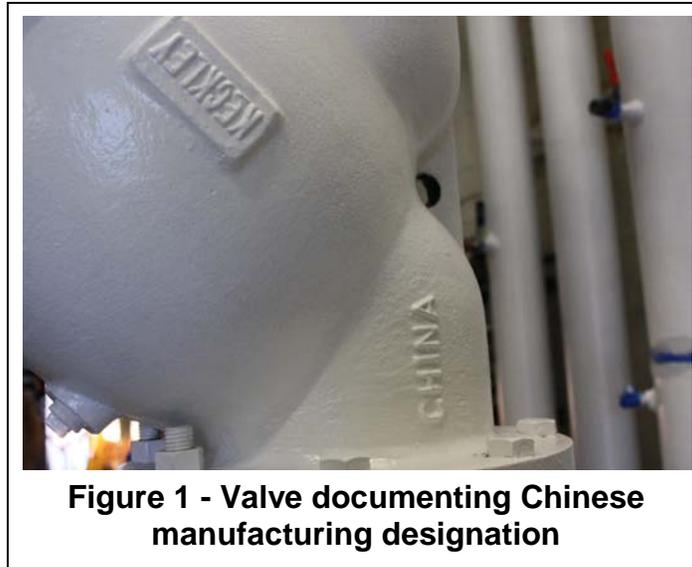
<b>Manufacturer</b>	<b>Type of Product</b>	<b>Country of Manufacture</b>
Keckley	Triple Duty Valves	China
ITT Bell and Gossett	Suction Diffusers	China
V and F/Johnson Controls	Transformers	China
Hoffman	Electrical Panel Boxes	Mexico

FAR 52.225-21, incorporated into the task order, defines construction material as an article, material, or supply brought to the construction site by the contractor or subcontractor for incorporation into the building or work. The clause implements section

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<sup>4</sup> These regulations include publicizing (FAR part 5), competition requirements (FAR part 6), contracting methods (FAR parts 13, 14, and 15), and small business programs (FAR part 19).

1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material are produced in the United States and requires the contractor to use only domestic construction material<sup>5</sup> in performing the contract. The contracting officer listed no exceptions.



If you have questions regarding this memorandum, please call me or Hilda Garcia, Audit Manager, at (312) 353-0500 and (312) 353-6695, respectively.

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<sup>5</sup> Domestic construction material is defined in the clause as construction material manufactured in the United States.



Greater Southwest Region

February 22, 2012

MEMORANDUM FOR ADAM GOOCH  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
GREAT LAKES REGION (JA-5)

FROM: JAMES S. WELLER   
REGIONAL COMMISSIONER  
GREATER SOUTHWEST REGION (7P)

SUBJECT: AWARD AND ADMINISTRATION OF CONTRACT  
FOR CONSTRUCTION SERVICES IN SUPPORT OF  
THE AMERICAN RECOVERY AND REINVESTMENT  
ACT (ARRA) OF 2009 AT THE INTERNAL  
REVENUE SERVICE SOUTHWEST SERVICE  
CENTER, AUSTIN, TEXAS

MEMORANDUM NUMBER A080184-27

The Public Building Services (PBS) appreciates the opportunity to review and comment on the subject draft audit report. The report identifies two areas of concern.

The first concern stated is the Public Buildings Service (PBS) improperly used the multiple award schedules to contract for this project. Specifically, the task order was entirely open market item and pricing was not based on the prime contractor's authorized schedule price list, and thus overall price reasonableness was not demonstrated. We have reviewed your findings and are in agreement. In addition, since the award of the project GSA PBS Acquisition Management (Code 7PQ) has conducted several training sessions with all of associates in 7PQ concerning proper use of Multiple Award Schedules and Other Than Full and Open Competition (OTFOC). In conjunction with the aforementioned an additional level of Acquisition Management review is required for sole source and limited source procurements with a dollar value exceeding the simplified acquisition threshold.

Second, the audit states foreign-manufactured construction materials were installed in violation of the Buy American provision of the Recovery Act. Prior to acceptance of construction of the project, the contractor, Decker Mechanical,

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replaced all of the foreign-made controls transformers and electrical panel boxes with products conforming to the Recovery Act Buy-American requirements. Attached are cut sheets of the US-made transformers and panel boxes, as well as pictures showing them in place at the construction site.

The triple duty valves and suction diffusers, however, were not replaced, due to the difficulty and schedule delays that would have resulted from draining and dismantling the chilled water piping system. The on-site GSA contract project manager in charge of inspecting the products being installed has since been dismissed, as GSA PBS chose not to renew his contract shortly before construction of the project was complete.

The remaining ARRA project managers have been counseled on the importance of complying with Recovery Act Buy American requirements on products that are installed under their projects.

Thank you for your assistance. If you have any questions, please contact Bobby Davis, Acquisition Management Division Director, at 817-978-0193.

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## **Report Distribution**

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